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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/606,433	06/28/00	MOGEE	L 18781-002710

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HM22/0910

EXAMINER	
SEAMAN, D	
ART UNIT	PAPER NUMBER

1625 7

DATE MAILED: 09/10/01

Please find below and/or attached an Office communication concerning this application or proceeding.

**Commissioner of Patents and Trademarks**

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/606,433	MCGEE ET AL.
	Examiner	Art Unit
	D. Margaret Seaman	1625

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on \_\_\_\_\_.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-54 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) \_\_\_\_\_ is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) 1-54 are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All
  - b) Some \*
  - c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
  - a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.

- 4) Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_.

**DETAILED ACTION**

1. This application was filed 28 June 2000 and claims priority to Provisional Application 60/141,672, filed 30 June 1999. Claims 1-54 are before the Examiner and are subject to the following restriction requirement.

*Election/Restrictions*

2. Restriction to one of the following inventions is required under 35 U.S.C. 121:
- I. Claims 1-54 (in part), drawn to compounds, compositions and methods of use wherein Ar' is pyridyl, classified in class 546, subclass 210+.
  - II. Claims 1-54 (in part), drawn to compounds, compositions and methods of use wherein Ar' is quinoline, classified in class 546, subclass 153.
  - III. Claims 1-54 (in part), drawn to compounds, compositions and methods of use wherein Ar' is naphthylene/phenyl, classified in various classes and subclasses, depending upon a further election of a single disclosed species.
  - IV. Claims 1-54 (in part), drawn to compounds, compositions and methods of use wherein Ar' is benzothiazole, classified in class 548, subclass 148+.
  - V. Claims 1-54 (in part), drawn to compounds, compositions and methods of use wherein Ar' is benzimidazole, classified in class 548, subclass 300.1+.
  - VI. Claims 1-54 (in part), drawn to compounds, compositions and methods of use wherein Ar' is isoquinoline, classified in class 546, subclass 141+.

VII. Claims 1-54 (in part), drawn to compounds, compositions and methods of use wherein Ar' is benzoxazole, classified in class 548, subclass 240+.

VIII. Claims 1-54 (in part), drawn to compounds, compositions and methods of use wherein Ar' is other than in groups I-VII plus an election of a single disclosed species, classified in various classes and subclasses.

3. The inventions are distinct, each from the other because of the following reasons:

Unpatentability of the group I compounds/compositions/methods of use would not necessarily imply unpatentability of the group II-VIII compounds/compositions/methods of use because the compounds/compositions/methods are so divergent that a reference providing a 35 U.S.C. §102(b) rejection on a member of one group would not render a member of the other groups obvious under 35 U.S.C. §103. Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. § 103 of the other invention.

4. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

5. A telephone call was made to Mr. William Kezer on 6 September 2001 to request an oral election to the above restriction requirement, but did not result in an election being made.

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Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

6. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to D. Margaret Seaman whose telephone number is 703-308-4528. The examiner can normally be reached on 630am-4pm, First Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jyothsna Venkat can be reached on 703-308-2439. The fax phone numbers for the organization where this application or proceeding is assigned are 703-308-4556 for regular communications and 703-308-4556 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1235.

  
D. Margaret Seaman  
Primary Examiner

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dms  
September 6, 2001